IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

WEDNESDAY, THE 14TH NOVEMBER 2007 / 23RD KARTHIKA 1929

RP.No. 895 of 2007(Y)

AGAINST THE JUDGEMENT/ORDER IN WPC.30566/2006 Dated 26/06/2007

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REVIEW PETITIONER/5TH RESPONDENT

PHILIP THOMAS
PALLOONNIL HOUSE, KAITHAPPURAM P.O.
KANNUR DISTRICT.

BY ADV. SRI.KURIAN GEORGE KANNAMTHANAM (SR.)
SRI.TONY GEORGE KANNANTHANAM

RESPONDENTS:

1. PENNAMMA.K.M.
PHYSICAL EDUCATION TEACHER
MARYLAND HIGH SCHOOL, MADAMBAM.

2. STATE OF KERALA, REPRESENTED BY ITS SECRETARY
GENERAL EDUCATION DEPARTMENT,
SECRETARIAT,TRIVANDRUM.

3. THE DIRECTOR OF PUBLIC INSTRUCTION,
THIRUVANANTHAPURAM

4. THE DISTRICT EDUCATIONAL OFFICER,
KOTTAYAM

5. THE CORPORATE MANAGER
CORPORATE EDUCATIONAL AGENCY OF SCHOOLS
DIOCESE OF KOTTAYAM, CATHOLIC BOSHIP'S HOUSE,
KOTTAYAM

BY GOVERNMENT PLEADER SMT.SUDHA

THIS REVIEW PETITION HAVING BEEN FINALLY HEARD ON 14/11/2007 ALONG WITH R.P.892/07 AND R.P.758/07, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

A.K.BASHEER, J.

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R.P.895/2007 in W.P.(C)No.30556 OF 2006
R.P.892/2007 in W.P.(C)No.30909 OF 2006
& R.P.758/2007 in W.P.(C)31074 OF 2006

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Dated this the 14th day of November 2007

ORDER

Having heard learned counsel for the parties and having perused the materials on record, I am not satisfied that this is a fit case warranting review of the judgment as contended by the petitioners.

2. It is the admitted position that review petitioner has preferred W.P.No.23442/07 challenging the amendment of Sub-Rule (3) of Rule 2 in Chapter XXXI KER. The contention of the review petitioner appears to be that the said amendment was brought in to nullify the writ of mandamus issued by this court in W.P.No.16770/03 and connected cases. In this context learned counsel has laid heavy emphasis on the judgment rendered by their lordships of the Supreme Court in **S.R.Bhagwat and others V. State of Mysore [1995 (6) SCC 16]**. He has also invited my attention to the decisions of the Supreme Court in **Madanmohan Pathak and another V.Union of India [1978 (2) SCC 50]; A.V.Nachane and another V. Union of India**

and another [1982 (1) SCC 205]; S.S.Bola and others V. B.D.Sardana and others [1997 (8) SCC 522] and National Agricultural Co-operative Marketing Federation of India Limited V. Union of India [2003 (5) SCC 23].

3. It is not in dispute that this court while rendering the judgment in W.P.No.16770/03 & connected cases had taken the view that the certificate in Physical Education issued by the Government of Karnataka could not be recognised as a requisite qualification to hold the post of Physical Education Teacher in terms of Sub-Rule (3) of Rule 2 in Chapter XXXI KER.

4. The above rule was amended with retrospective effect from 1984. It is contended that a binding judicial pronouncement between parties cannot be made ineffective with the aid of any legislative power by bringing in an amendment to a statutory provision and that too retrospectively.

5. But it is pointed out by learned counsel for the writ petitioners that there was no binding judicial pronouncement between the parties as contended by the review petitioners. The rule was amended by the government in exercise of the power

vested with it. The primary grievance of the petitioner appears to be that the amendment of the rule has taken away his right to continue as teacher. It is in the above context that he has raised the contention that the amendment is vitiated. Anyhow, the fact remains that the review petitioner has already challenged the legality and validity of the amendment in W.P.No.23442/07.

6. Therefore, I am of the view that the prayer made by him to review the judgment in this case is misconceived. It will be open to the review petitioner to urge all his contentions in the above writ petition. Similarly, it will be open to the respondents/Physical Education teachers also to take up all the contentions available to them in the above case. With that liberty reserved in favour of the review petitioner as well as the party respondents, these review petitions are closed.

It is however made clear that the observations made in W.P.(C)Nos.31074, 30566, 30909 of 2006 will be subject to the result of Writ Petition No.23442/2007.

(A.K.BASHEER, JUDGE)

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